APPENDIX A

Opinion of Hon. Edward Weinfeld Denying Petitioners' Motion in Appeal Docket No. 31115 as Being Without Merit

[Filed November 7, 1966]

[1]* UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

#32909

FILED

Nov. 7, 1966

60 Civil 3511

ALLEGHANY CORPORATION,

Plaintiff,

—against—

ALLAN P. KIRBY, CHARLES T. IRELAND, JR. and FRED M. KIRBY,

Defendants.

EDWARD WEINFELD, D. J.

This is the latest attempt to resurrect a case that apparently and hopefully had been put to rest when the Court of Appeals, en banc, by an equally divided court,

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* Numbers in brackets correspond to numbering of pages in official opinion on file in the District Court.

affirmed the judgment of the District Court entered on June 3, 1963,[1] and thereafter sustained an order denying intervention by [2] certain stockholders.[2]

A new group now moves for leave to intervene in this action and to void the judgment so entered and affirmed. The application centers about a contention that the resumption of corporate control by the Kirby interests on December 4, 1963, two days after the original panel of the Court of Appeals heard oral argument of the appeal from the judgment, foreclosed any justiciable controversy between "parties having adverse legal interest," in consequence of which the original panel of the Court of Appeals and the en banc court, were without jurisdiction to render their respective judgments. The fact that the Kirby group regained control of the corporation was fully disclosed to the Court of Appeals. Moreover, the central issue before the panel which sustained the denial of the prior application for intervention concerned this shift of control and adequacy of representation. Finally, the [3] *South Spring* case,[3] so strongly pressed by counsel, was specifically called to the court's attention. It is sufficient to say that in the light of the entire record before the

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[1] Alleghany Corp. v. Kirby, 218 F. Supp. 164 (S. D. N. Y. 1963), aff'd, 333 F. 2d 327 (2d Cir. 1964), aff'd on rehearing en banc by an equally divided court, 340 F. 2d 311 (2d Cir. 1965), cert. dismissed as improvidently granted sub nom. Holt v. Alleghany Corp., 384 U. S. 28 (1965).

[2] Alleghany Corp. v. Kirby, 344 F. 2d 571 (2d Cir. 1965), cert. dismissed as improvidently granted sub nom. Holt v. Alleghany Corp., 384 U. S. 28 (1965).

[3] South Spring Hill Gold Mining Co. v. Amador Medean Gold Mining Co., 145 U. S. 300 (1892).

Court of Appeals, the application is not only without merit, but requires no discussion of the contentions made by the movants.

The motion is denied.

Dated: New York, N. Y.
November 7, 1966

/s/ EDWARD WEINFELD
United States District Judge

APPENDIX B

Endorsement of Hon. Edward Weinfeld Denying Petitioners' Motion to the District Court to Vacate His Decision for Lack of Jurisdiction, in Appeal Docket No. 31115

The within motion is denied in all respects.

December 9th 1966

/s/ EDWARD WEINFELD
USDJ

U. S. District Court
FILED
DEC. 9, 1966
S.D. of N.Y.